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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,975	10/11/2001	Robert W. Casey	RWC 01065	9812
7590 12/23/2005 JAMES RAY & ASSOCIATES 2640 PITCAIRN ROAD MONROEVILLE, PA 15146			EXAMINER CARIASO, ALAN B	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/973,975	<b>Applicant(s)</b> W. CASEY, ROBERT	
	<b>Examiner</b> Alan Cariaso	<b>Art Unit</b> 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's petition to revive and accompanying amendment filed January 31, 2005 is acknowledged. Applicant's petition has been granted on a decision mailed June 28, 2005. Claims 1-14 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by CONSTANTINE (US 2,631,040).
4. CONSTANTINE discloses a lighting system (fig.1) for illuminating an interior of a fireplace, comprising: a rod (log 2) for securing said lighting system to an inner surface of such fireplace (col.1, lines 1-23); a bracket member (clamp 8, fig.2) engageable (col.1, lines 51-55) with the rod (2), a first means (socket 16) attached to the bracket member (8) for providing illumination; a second means (leads 18, 22) connected to the first means (16) for providing power to the first means (16) for illumination (col.2, lines 12-17); wherein the second means (18, 22) is at least a standard 110 volt electrical circuit (col.2, lines 15-17 & 55-56); wherein the second means (18, 22) further includes a flasher arrangement (14) for providing a twinkle effect (col.3, lines 2-25); wherein the

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first means (16) includes a plurality of incandescent lamps (4, 6, 26, fig.2) which may be different colored lamps (col.2, lines 1-2 & 19-25).

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by BRIDGEWATER (US 4,962,750).

6. BRIDGEWATER discloses a lighting system (fig.1) for illuminating an interior of a fireplace (col.1, lines 6-8), comprising: a rod (metallic bar 16) for securing said lighting system to an inner surface of such fireplace (figs.1-2); a bracket member (mount 22 with bracket arm 27) engageable with (col.2, lines 54, 63-64) the rod (16), a first means (pipe 21) attached to the bracket member (22, 27) for providing illumination (col.2, lines 51-58); a second means (gas line 23) connected to the first means (21) for providing power to the first means (21) for illumination; wherein the second means (23) is gas (col.2, line 55).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over BRIDGEWATER (US 4,962,750).

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9. Claim 8 recites said rod being an expandable rod, not disclosed by BRIDGEWATER. It would have been obvious to one of ordinary skill to provide any of the rod being metallic bar in the fireplace device of BRIDGEWATER, with the rod or bar being expandable, at least thermally, since it has been well-known in the art that objects expand or are able to expand in size or length with application of heat, in the case of BRIDGEWATER, from the flames (32, 40) produced in the device.

#### ***Allowable Subject Matter***

10. Claims 9-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: Claims 9-14 have allowable subject matter not suggested by the prior art of record being an expandable rod for securing the lighting system to an inner surface of the fireplace including any one of: the expandable rod being spring loaded; the expandable rod having mechanical means for providing expansion; the expandable rod including pads on each end of the expandable rod.

#### ***Response to Arguments***

12. Applicant's arguments, filed January 31, 2005, with respect to the rejection(s) of claim(s) 1-14 under Demshki, Jr. (US006004005A), N. Meyerowitz (U5002979605), T. A. Stifrel (175002965751) have been fully considered and are persuasive. Therefore,

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the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of CONSTANTINE (US 2,631,040) and BRIDGEWATER (US 4,962,750).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GRITT et al (US 1,901,294) and WEAVER (US 1,010,101) show lighting systems for fireplaces that include support rod portions of andirons (6 in GRITT, 2 in WEAVER) attached to bracket (fig.2 in GRITT, 10-fig.2 in WEAVER) attached to illumination means (electric socket-bulb 20,21 in GRITT, 6-fig.2 in WEAVER) with inherent power line-supply means. CONROY et al (US 3,742,189) show support bars (44, 46, fig.1) of fireplace assembly, including attached brackets (fig.2) that support sockets (68a) providing illumination by lamp bulbs (68) which are differently colored (col.4, lines 12-28). EIKLOR et al (US 5,099,591) show support rod (36) in a fireplace (10,14) supporting an attached V-shaped bracket (fig.1) supporting a gas pipe (18). BARRETT (US 2002/0084394 A1) shows a spring-loaded (7) mechanically expandable rod (1, fig.4) including rubber pads (2) at opposite ends secured to surfaces of fireplace (paragraphs 0001 & 0010) for supporting ornamental objects. WILLIAMSON (US 6,561,468 B2) shows a rod (2) affixed or secured to fireplace walls (col.2, lines 36-37, col.3, lines 36-39), that support and display ornamental objects. STIFFEL (US 2,942,829) show lighting system of plural lamps attached and to a spring-loaded

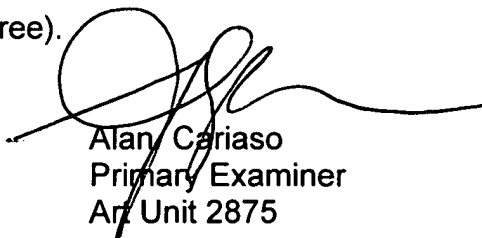
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mechanically expandable rod (fig.1) including padded means (figs.2 & 4) at opposite ends.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso  
Primary Examiner  
Art Unit 2875

December 21, 2005  
AC